

REMARKS

In a Final Office Action mailed on February 23, 2006, claims 39, 41, 43, 45, 47, 49, 51, 53 and 55 were rejected under 35 U.S.C. § 102(e) as being anticipated by Thro; and claims 40, 42, 44, 46, 48, 50, 52, 54 and 56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Thro. The rejections are discussed below.

Rejections of Claims 39-44:

The method of independent claim 39 recites receiving in a driver program first and second requests that are generated by an application program and using the driver program to evaluate a bandwidth and the compliance with the first and second requests based on the evaluated bandwidth and frame rate.

The Examiner maintains the § 102 rejection of independent claim 39 in view of Thro. However, as conceded by the Examiner, Thro does not mention a "driver program." The Examiner relies on the untenable conclusion that because drivers are well known, the specific acts that are recited in independent claim 39 are somehow inherent in Thro.

In order for a claim limitations to be inherent, however, the claim limitation must necessarily flow from the reference. *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). Even though Thro's computer may contain a driver program, it does not necessarily flow from Thro that Thro's computer contains an application program that generates the first and second requests, as specifically recited in independent claim 39 and it does not necessarily flow from Thro that Thro's computer contains a driver program that processes first and second requests as specifically set forth in independent claim 39.

In order to establish a *prima facie* case of anticipation, the Examiner must show where all of the claim limitations are expressly or inherently taught by a prior art reference. Instead of making this showing, the Examiner assumes that the missing claim limitations are inherent. However, the Examiner fails to show why these missing claim limitations necessarily flow from Thro. As such, Applicant respectfully requests withdrawal of the § 102 rejection of independent claim 39.

Claims 40-44 are patentable for at least the reason that these claims depend from an allowable claim. However, these claims are patentable for additional, independent reasons. For example, the Examiner still fails to show where Thro allegedly teaches using a driver program to

intermittently check available bandwidth and thus, fails to establish a *prima facie* case of obviousness for claim 40.

Regarding dependent claim 42, the Examiner cites Arango to support the contention that progressively submitting requests and monitoring denial of these requests is well known in the art. However, Arango discusses denial of a request based on an available bandwidth and also discusses transmission of a message indicating negotiation. However, contrary to the claim limitations, Arango teaches a different technique, i.e., negotiation, to establish bandwidth. Arango does not, however, teach or even suggest progressively using requests to request more bandwidth and submitting the request until the bus interface denies one of the requests. As such, for at least this reason, Arango does not support the Official Notice.

To support the Official Notice of a resolution being determined at least in part on a determination of a scaling capability of camera, the Examiner cites Masamine. However, Masamine merely teaches that a display capability is considered when determining a transmission and resolution speed. This in no way, however, teaches or suggests adjusting a resolution based on a scaling capability of a camera. Applicant therefore requests the Examiner to cite specific language showing where Masamine allegedly discloses a scaling capability of a camera and the adjusting of resolution based on this scaling capability. Otherwise, Applicant maintains the traversal of the Official Notice and requests another reference from the Examiner. Thus, Applicant respectfully requests withdrawal of the §§ 102 and 103 rejections of claim 39-44.

§§ 102 and 103 Rejections of Claims 45-50:

The article of independent claim 45 includes a computer accessible storage medium that stores instructions to, when executed, cause a processor-based system to receive first and second requests to better generate by an application program, evaluate bandwidth and cause the system to selectively comply and not comply with the first and second requests based on the evaluation of the available bandwidth.

See discussion of independent claim 39 above. In particular, the Examiner concedes that Thro fails to teach or suggest a driver program. Although Thro's computer may arguably include application programs with driver programs, the Examiner has not shown why the expressly recited interaction between the driver program and application programs, as set forth in

independent claim 45, necessarily flows from Thro. As such, Applicant maintains that a *prima facie* case of anticipation has not been set forth for independent claim 45.

Claims 46-50 are patentable for at least the reason that these claims depend from an allowable claim. However, these claims are patentable for additional, independent reasons.

For example, as previously set forth, claims 48 and 50 recite features that are neither taught nor suggested by Thro. Furthermore, Applicant refers to the discussion of claims 42 and 44 above regarding the deficiency of the Official Notice.

Thus, for at least the reasons that are set forth above, withdrawal of the §§ 102 and 103 rejections of claims 45-50 is requested.

§§ 102 and 103 Rejections of Claims 51-56:

The computer system of independent claim 51 includes a processor that receives in a driver program a first request that is generated by an application program for a frame rate and a second request that is generated by the application program for a resolution.

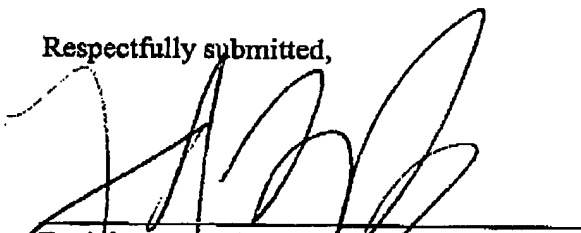
See discussion of independent claim 39 above. In particular, Thro fails to teach, either expressly or inherently, application and driver programs and their specific relationship, as set forth in independent claim 51. Furthermore, Thro fails to teach or even suggest the first and second requests that are specifically recited in independent claim 51. Therefore, for at least this reason, withdrawal of the § 102 rejection of claim 51 is requested. Claims 52-56 are patentable for at least the reason that these claims depend from an allowable independent claim. Furthermore, dependent claims 52, 54 and 56 are patentable for the additional, independent reasons that are set forth above in the discussion of dependent claims 40, 42, 48, 44 and 50 above.

Therefore, for at least the reasons that are set forth above, withdrawal of the §§ 102 and 103 rejections of claims 51-56 is requested.

CONCLUSION

In view of the foregoing, withdrawal of the §§ 102 and 103 rejections and a favorable action in the form of a Notice of Allowance are requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (ITL.0045US).

Respectfully submitted,



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